

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

FILED
U.S. DISTRICT COURT
ATLANTA DIV.

2014 DEC 17 PM 2:14

DUBLIN DIVISION

CLERK *J. Doe*
S.D. DIST. OF GA.

RICK MARTIN BOSWORTH,

)

Plaintiff,

)

v.

CV 314-063

BRAD HOOKS, Warden, Johnson
State Prison, et al.,

)
)
)

Defendants.

)

ORDER

After a careful, *de novo* review of the file, the Court concurs with the Magistrate Judge's Report and Recommendation, to which no objections have been filed. In lieu of objections, Plaintiff filed a motion to voluntarily dismiss this case in accordance with Fed. R. Civ. P. 41(a)(1) and the recommendation of the United States Magistrate Judge. (Doc. no. 41.)

Plaintiff originally filed this case in the Middle District of Georgia, but it was transferred when it became clear that Plaintiff was complaining about events that had occurred in the Southern District. (See doc. no. 14.) When the Court first took up the case upon its arrival in the Dublin Division, Plaintiff was cautioned that, pursuant to the Prison Litigation Reform Act, "a prisoner cannot bring a new civil action . . . *in forma pauperis* if the prisoner has on three or more prior occasions, while incarcerated, brought a civil action or appeal in federal court that was dismissed because it was frivolous, malicious, or failed to state a claim upon which relief may be granted." (Doc. no. 24, p. 2.) Because of these requirements, Plaintiff was given an

opportunity at that time to voluntarily dismiss his case pursuant to Fed. R. Civ. P. 41(a)(1) and not be subjected to a “strike” under 28 U.S.C. § 1915(g). (*Id.* at 3-4.)

Plaintiff chose to proceed with his case. The Magistrate Judge reviewed Plaintiff's pleadings in conformity with the *in forma pauperis* statute and recommended that Plaintiff's case be dismissed for failure to follow a court order and failure to state a claim upon which relief can be granted. (Doc. no. 37.) A dismissal for failure to state a claim, as well as a dismissal for abuse of the judicial process, counts as a strike under § 1915(g). Rivera v. Allin, 144 F.3d 719, 730-31 (11th Cir. 1998), *abrogated on other grounds by* Jones v. Bock, 549 U.S. 199 (2007); see also Allen v. Clark, 266 F. App'x 815, 817 (11th Cir. 2008). Plaintiff cannot now avoid a strike by voluntarily dismissing his case. As a result, the Court **DENIES** Plaintiff's motion to voluntarily dismiss his case. (Doc. no. 41.)

Accordingly, the Court **ADOPTS** the Report and Recommendation of the Magistrate Judge as its opinion, **DENIES** Plaintiff's motions for emergency treatment and to stay in the Southern District of Georgia, (doc. nos. 3, 34), **DISMISSES** this case without prejudice, and **CLOSES** this civil action.

SO ORDERED this 17th day of December, 2014, at Augusta, Georgia.


UNITED STATES DISTRICT JUDGE